[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

February 23, 1938.

IN RE YAP GEOK SONG DECEASED.

In the matter of a Contract dated the 8th day of November 1937 made on behalf of the Sheriff of Singapore under a Writ of Extent and Sale dated the 20th day of October 1936 issued in Crown Suit No. 2 of 1936—The Attorney-General vs. Tan Seng Neo and Yap Kim Chuan (Executors of the Estate of Yap Geok Song deceased) for sale to Tan Khuat Siong of property known as No. 18, Jiak Kim Street.

And

In the matter of the Conveyancing and Law of Property Ordinance (Cap. 118).

[SINGAPORE ORIGINATING SUMMONS No. 14 of 1938].

Crown Suits Ordinance (Cap. 43) S.50—Execution—seizure completed by registering order attaching debtor's interest in Registry of Deeds—lapse of six months—renewal of writ of extent not necessary.

Section 50 of the Crown Suits Ordinance refers, in the case of a writ of extent on mesne or final process, to an unexecuted writ.

A writ of extent issued under the Ordinance is executed, as in the case of a writ of seizure and sale of immovable property in ordinary civil suits, as soon as the order attaching the judgment debtor's interest is registered, pursuant to R.S.C. Order XLI r.1, in the Registry of Deeds.

VENDOR and PURCHASER SUMMONS.

The facts and arguments appear sufficiently from the judgment below.

Haydon, for the applicant.

Worley, Solicitor-General for the Attorney-General and Sheriff of Singapore.

Cur. Ad. Vult.

McELWAINE, C.J.—On 7th September 1936 the Attorney-General recovered Judgment against the executors of the estate of a deceased person in Crown Suit No. 2 of 1936 for $23,731.34.

A writ of extent and sale was issued to the Sheriff on 20th October 1936. The Sheriff seized a one-third share of the property known as 18 Jiak Kim Street, Singapore, (which formed part of the estate of the deceased) by registering a Court Order under O.XLI r. 1 in the Registry of Deeds on 3rd November 1936.

By an open contract of sale dated 8th November 1937 the solicitors for the Attorney-General on behalf of the Sheriff of Singapore contracted to sell to the applicant Tan Khuat Siong the right title and interest of the deceased in the said property.

By an Order of Court made in the said Crown suit on 15th November 1937 it was ordered that the Sheriff should be at liberty to sell by private treaty all the right title and interest of the deceased in the said property.

The purchaser objects to the Sheriff's title to sell on the ground that the writ of extent was not renewed and consequently expired by virtue of section 50 of the Crown Suits Ordinance (Chapter 43) long before the date of the contract of sale.

Section 50 of the Crown Suits Ordinance as far as material reads as follows:—

> "Writs of extent, whether on mesne or final process, under this Ordinance shall remain in force for six months only, but may be renewed from time to time."

I think this section refers, in the case of a writ on final process, to an unexecuted writ. Section 43(3) enacts that under such writ the immoveable property of the defendant shall be seized and disposed of as on final process in ordinary suits, subject to this Ordinance. Section 52 enacts that the law relating to execution in civil suits shall, subject to this Ordinance, be in force in relation to Crown Suits.

The mode of seizing immoveable property of a judgment debtor under a writ of seizure and sale in a civil suit is by registering, under the Registration of Deeds Ordinance (Chapter 121) an Order of Court. Order XLI rule 1. Such an order has been obtained and registered in this case.

By Order XL rule 18 a writ of seizure and sale, if unexecuted, shall remain in force for one year only, unless renewed. What lapses, if not renewed, is an unexecuted writ.

In *Meenambal* v. *Tan Kee Chong*, (1934) S.S.L.R., 10, 3 M.L.J. 280 it was held that a writ of seizure and sale so far as it affected immoveable property is executed by the Sheriff as soon as the order attaching the interest of the judgment debtor is registered and notice given to him, and that it is immaterial whether or not the seizure is completed by the sale of the property seized.

That case was under the old Civil Procedure Code, section 588 now Order XL r.18.

Under a writ of seizure and sale, seizure is effected by registering a Court Order.

The same practice has applied to writs of extent and sale on final process under the Crown Suits Ordinance for many years.

If this practice is correct it appears to me that the writ was executed when the Court Order was, in complicance with O. XLI. r. 1, registered in the Registry of Deeds on 3rd November 1936, and that a writ which is executed cannot expire. To hold otherwise would have startling results: a writ of extent on seizure and sale which has become a link in a title would have to be renewed every six months.

The point which I have found troublesome in this case is section 17 (3) of the Crown Suits Ordinance. I greatly doubt if this subsection is

confined to writs in the second or subsequent degrees.

On inquiry I find that no Register of Crown Suits is kept or has been kept in Singapore for many years under section 17(4). I can get no information as to when such a book was last kept. An officer of the Registry of Deeds who has been there for twenty six years remembers no such book.

The procedure for enforcing writs of *fieri facias* against lands in 1876 was governed by Indian Act *VI* of 1855. The land could be seized and sold by the Sheriff who could put the purchaser into possession. It appears to me that the purpose of the notice under section 17 (3) of the commencement of the suit was to serve as a kind of caveat to protect the Crown and that the notice of the writ of extent was to strengthen that caveat.

Then came the Civil Procedure Code of 1878 under sections 364 and 365 of which the writ was to be registered in a book to be kept by the Registrar called the "Executions against Land Book." Such registration was to remain in force for six months but could be renewed.

The Registration had the effect of making the judgment a charge on the land.

The writ of execution itself called upon the judgment debtor to appear before the Supreme Court on a day named in the writ and then to be examined respecting his title and interest in the lands particulars of which were indorsed on the writ, in order that the same may be sold. The writ of execution against lands therefore became in 1878 not a writ of seizure actual or constructive but a kind of combined charge on land and Judgment debtor summons.

This was followed by section 619 of the Civil Procedure Code of 1907 replaced by Order XLI.

This history of procedure in civil cases is merely useful as indicating that as ordinary civil procedure became more effective, the special provision necessary to protect the Crown in 1876 became less and less necessary, and in my opinion in any Settlement where the Registration of Deeds Ordinance (Chapter 121) is in force it is not incumbent upon the Crown to comply with section 17 (3) and (4) in the case of a writ on final process if the procedure prescribed in Order XLI, rule 1 has been followed.

I think it probable that the procedure of enforcing such writs as the writ in this case was, by virtue of sections 43 (3) and 52 assimilated to the ordinary civil procedure when such procedure was provided for by local legislation and having regard to what has been long settled practice the procedure adopted in this case must be regarded as being valid and the writ of extent and sale on final process must, when the Order referred to in Order XLI, rule 1 has been registered, be regarded as an executed writ which requires no renewal.

The Solicitor-General's argument that section 50 of the Crown Suits Ordinance only applies to executed writs is correct.

I therefore make an order that the objection of Tan Khuat Siong in respect of the above mentioned contract of sale has been sufficiently answered.

Order accordingly.

Solicitors for the applicant—*Donaldson & Burkinshaw.*

Solicitor for the Attorney-General and Sheriff—*Solicitor-General; S.S.*

[COURT OF CRIMINAL APPEAL]

McELWAINE, C.J., TERRELL & HORNE, JJ.

March 2, 1938.

K. OHKI AND ORS. v. REX.

[SINGAPORE CRIMINAL APPEAL No. 1 of 1938]

Criminal Law—trafficking in counterfeit notes—Penal Code, S. 489—B.

The word "traffic" in section 489-B of the Penal Code includes any act done in connection with, and directly leading up to, a passing of forged notes, whether the passing is effected or not.

CRIMINAL APPEAL.

The first and second appellants were tried before Mr. Justice Gordon Smith and a Common Jury on a charge under Section 489-B of the Penal Code (Trafficking in counterfeit notes) and were convicted.

The charge read as follows:—

> On or about the 24th August, 1937, at the Tong Lok Hotel, Burma Road, Penang, did traffic in counterfeit notes, namely, by producing 488 counterfeit Straits Settlements ten-dollar currency notes for sale to a male Chinese known to you as Lee Siew of Ipoh but known to the Police of Penang as Asiatic Inspector Kay, which said currency notes were known to you to be counterfeit. Section 498-B Penal Code.

From this conviction the 1st and 2nd appellants appealed to the Court of Criminal Appeal.

Chidson for 1st Appellant.

Mundell for 2nd Appellant.

Howe, Crown Counsel, for the Crown.

The facts and arguments sufficiently appear from the judgment of the Court of Criminal Appeal (**McELWAINE, C.J., TERRELL AND HORNE, JJ.**)

Cur. Ad. Vult.

The judgment of the Court was as follows:—

This case has been very fully and exhaustively argued by Mr. Chidson and by Mr. Mundell and every point has been brought to our notice.

We think there is no substance in the objection taken to the interpretation in Kichi Yoshi Ohki's appeal. The ground of objection is that for the first four days of the trial the interpretation was inefficient in that the interpreter was not sufficiently skilful and also suffered from a slight deafness. In view, however, of the cross-examination which Ohki